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3 HON. J. RICHARD CREATURA
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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
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16 NATHEN BARTON,
17 Plaintiff
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19 v.
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21 JOE DELFGAUW, XANADU
22 MARKETING INC., EXPERIAN
23 INFORMATION SOLUTIONS INC.,
24 STARTER HOME INVESTING INC,
25 JOHN DOE 1-10
Defendants.

Case No.: 3:21-cv-05610-JRC

MOTION FOR INVOLUNTARY
DISMISSAL DUE TO PLAINTIFF'S
ATTEMPT TO COMMIT FRAUD
UPON THE COURT

NOTED FOR: Fri. Feb. 25, 2022

16 JOE DELFGAUW, XANADU
17 MARKETING INC., STARTER HOME
18 INVESTING INC,
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20 Counterclaimants
21 v.
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23 NATHEN BARTON,
24 Counter Defendant
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1 through their counsel, Donna Gibson and in accordance with applicable Federal Rules of Civil
 2 Procedure, including F.R.C.P. § 41(b), and hereby file this Motion for Involuntary Dismissal
 3 due to Plaintiff's attempts to commit fraud upon this Court, and in support thereof assert the
 4 following. This motion is based on the Declaration of Donna Gibson, and the Records and
 5 Files herein.

6 **I. INTRODUCTION**

7 The belief that cheaters should not be allowed to prosper from their dishonest ways, is
 8 central to the moral fabric of our society and one of the underpinnings of our legal system. To
 9 allow such dishonesty to prevail would directly undermine the judicial process. Plaintiff has
 10 sued the moving Defendants for violations of the Telephone Consumer Protection Act
 11 (TCPA) and related state telemarketing laws and in doing so, Plaintiff has filed numerous
 12 documents with this Court in which Plaintiff has either manipulated or fabricated evidence in
 13 a continuing scheme to deliberately provide the court with false information in an ongoing
 14 attempt to deceive the court and thus interfere with the Court's ability to impartially
 15 adjudicate this case. Plaintiff's conduct, which forms the basis for this dismissal, is willful and
 16 was done as a deliberate scheme with the intent to alter evidence and deceive this court.

18 **II. LEGAL STANDARD**

19 The requisite fraud on the court occurs where it can be demonstrated, clearly and
 20 convincingly, that a party has sentiently set in motion some unconscionable scheme
 21 calculated to interfere with the judicial system's ability impartially to adjudicate a
 matter by improperly influencing the trier of fact or unfairly hampering the
 presentation of the opposing party's claim or defense.

22 *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989). "Thus, a Court's power to
 23 dismiss an action with prejudice for Fraud Upon the Court is derived (1) from its inherent
 24

authority to regulate the proceeding before it, and (2) from F.R.C.P. § 41(b)." *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006).

"The trial court has the inherent authority, in the exercise of its sound judicial discretion, to dismiss an action when the plaintiff has perpetrated a fraud on the court,..." *Kornblum v. Schneider*, 609 So.2d 138 (Fla. App. 1992).

During the pendency of this action and in his own pleadings and motions, Plaintiff has omitted and/or falsified information in a minimum of three different pleadings filed with this Court in the last two months. This demonstrates a scheme calculated to interfere with this Court's ability to impartially adjudicate the case at hand by improperly influencing the Court. *See* Declaration of Donna Gibson.

III. ARGUMENT

Plaintiff has committed fraud upon this Court on at least five separate occasions, in three separate pleadings, having derived a scheme to deliberately providing this Court with false information in an ongoing attempt to deceive the Court and thus interfere with the Court's ability to impartially adjudicate this case.

A. Attorneys' Fees

On November 22, 2021, Defendant’s counsel filed a motion to dismiss Plaintiff’s case against Defendant Joe Delfgauw. Dkt 47. In that motion, Defendant’s counsel argued that Plaintiff should not be awarded attorney fees as Plaintiff is not an attorney and attorney fees are not awarded to non-attorney pro se plaintiffs. Dkt. 47, 8:23-28. In response, Plaintiff quickly filed a Motion to Amend Original Complaint. Dkt 51 and attached a Proposed Amended Complaint, Dkt. 51-1. In Plaintiff’s Proposed Amended Complaint, he states, “Plaintiff asks for other awards, examples being, but not limited to, court cost, attorney fees,

1 pre-judgement interest, and post judgment interest. Barton has consulted with an attorney in
2 this matter and is obligated to pay that attorney the just and proper rate as agreed to in the
3 attorney engagement agreement". Dkt. 51-1 32:18-22. Plaintiff declares to the court that he
4 has consulted with an attorney and that an attorney engagement agreement has been executed
5 by which he is obligated to pay. Plaintiff then on December 3, 2021, filed an Amended
6 Motion to Amend Original Complaint, Dkt. 56, and attached a Proposed Amended Complaint,
7 Dkt. 56-1, in which he again states that he has executed an attorney engagement agreement.
8 Dkt. 56-1 32:18-22. However, prior to Plaintiff filing these Motions and attached Purposed
9 Amended Complaints, Plaintiff posted on Facebook,
10

11 "Some folks might be surprised to learn that I have an attorney,
12 but there are things not taught on You Tube and the like. I
13 offered to pay her after my first consolation and she said no, no
charge on the initial consolation. Today was my second
consultation with her, and at the end again asked how much I
14 owed her. No charge she said, "you are a very interesting
individual" ..." 14

15 See Facebook post attached as **Exhibit A to Declaration of Edward Winkler**. Plaintiff
16 attempts to deliberately mislead the Court into believing that he has incurred attorney fee
17 while bragging on social media that he has received free legal advice. Plaintiff deliberately
18 filed false information, which goes directly to issue of damages.
19

20 Not only that, if he has, in fact, engaged an attorney, then said attorney should be
21 appearing, rather than Mr. Barton appearing pro se.
22

23 **B. Plaintiff Deliberately Provided False Information to Support His Motion.**

24 On December 15, 2021, Plaintiff filed a Motion to Take Judicial Notice of IP Address
25 Geolocation Inaccuracy. Dkt. 64. In the motion, Plaintiff attempts to discredit
Defendants' evidence by showing that fifteen different geolocation websites provide multiple

1 locations, with some differing from the others and therefore, Plaintiff contends that such sites
 2 are inaccurate.
 3

4 Plaintiff provides what he claims to be screen shots from each of the searches to
 5 support his argument. However, Plaintiff omits the actual search results for iplocation.net
 6 stating, “The actual report generated by iplocation.net is lengthy and not suitable for a screen
 7 shot” Dkt. 64 15:24. Defendants have attached screen shots of the actual report generated by
 8 iplocation.net as **Exhibit B to Declaration of Edward Winkler**. Instead of the actual report
 9 generated by iplocation.net, Plaintiff has provided the court with what he claims to be the
 10 search results from iplocation.net, Dkt. 64 15: 4-8. As is evident, the GPS coordinates, which
 11 Plaintiff claims to be the search results from iplocation.net are not the same as those listed on
 12 the actual report.
 13

14 In his motion, Plaintiff created a table with which he hopes to persuade the Court. Dkt.
 15 64 20:5-15. Next to the entry for iplocation.net, Plaintiff has placed the word, “Complicated”
 16 and footnote 13. Footnote 13 states, “Results varied from a residence 3 miles from Barton to
 17 the Vancouver mayor’s office to a prison complex 489 miles from Barton”. Plaintiff’s
 18 statements regarding the Vancouver Mayor’s office and the prison complex 489 miles from
 19 him, are both false.
 20

21 Plaintiff attempts to demonstrate the inaccuracies of the geolocation websites to the
 22 Court by providing exaggerated and false information with the hope that such false
 23 information will influence the court decision making. Although Plaintiff definitively states
 24 that GPS coordinates, 38.55243, -121.32941, are present in the search results from
 25 iplocation.net, and that these coordinates show that the IP address is associated with a prison
 complex 489 miles from him, in reality, the actual report generated by iplocation.net, and

1 attached as **Exhibit B to Declaration of Edward Winkler**, prove this statement to be false.

2 This is yet another attempt by Plaintiff to obstruct and improperly influence the court.

3 Plaintiff's statement that the results of the iplocation.net report show that the IP
4 address can be traced to the office of the Mayor of Vancouver, is yet another example of
5 Plaintiff's attempts to commit fraud on the Court. The office of the mayor of Vancouver,
6 Washington, is located at 415 W 6th Street, Vancouver, WA 98660. **See Declaration of**
7 **Edward Winkler, Exhibit C.** As Exhibit C demonstrates, none of the GPS coordinates
8 provided by Plaintiff match those of the office of the Mayor of Vancouver, Washinton. If
9 Plaintiff could convince the Court that the IP address could be shown to be off by over 400
10 miles or associated with a location as recognizable as the office of the Mayor of Vancouver,
11 the Court would certainly have to take notice of such discrepancies; or at least that is what
12 Plaintiff hopes for.

13

14 C. Plaintiff Deliberately Manipulated Information to Influence the Courts Opinion of
Defendant

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16 On December 22, 2021, Plaintiff filed his, "Motion to Take Judicial Notice of
17 Defendant Joe Delfgauw's Fraud Conviction". Dkt 70. Plaintiff's entire purpose for
18 introducing this irrelevant and unrelated information to the court is to influence and interfere
19 with this Court's ability to impartially adjudicate this case by attempting to paint an
20 unflattering image of Defendant. Plaintiff in his motion states, "Citimortgage lost \$203,000 to
21 the scheme and Delfguaw's plea subjected him to up to 21 months in prison". Dkt 70 2:19-20.
22 Although the Plea Agreement states a range of 15 to 21 years and stated the full amount
23 Citimortgage wrote off its books, it does not disclose the actual sentence imposed. Plaintiff,
24 although aware of the actual sentence imposed, elected to state only the upper limits of the
25

1 plea agreement in an attempt to influence the Court's opinion, while burying the actual
 2 sentence imposed in the exhibits attached to the motion. Dkt 70-3. Facing up to 21 years in
 3 prison sounds bad and that is just how Plaintiff intended it to sound, even though Plaintiff
 4 knew that Defendant Delfgauw was sentenced to only "**One day**". Dkt 70-3 2: 2-3. Likewise,
 5 Plaintiff stated the loss as declared by the bank and listed in the plea agreement rather than the
 6 actual restitution ordered, which was **two and a half times lower than the amount** Plaintiff
 7 provided to the court.

8 In sum, Plaintiff intentional omission facts of Defendant's sentencing, by his
 9 disclosure of only the upper limits of the plea agreement is a deliberate attempt by Plaintiff to
 10 deceive and manipulate this Court. "The trial court has the inherent authority, in the exercise
 11 of its sound judicial discretion, to dismiss an action when the plaintiff has perpetrated a fraud
 12 on the court,..." *Kornblum v. Schneider*, 609 So.2d 138 (Fla. App. 1992).

13 The integrity of the civil litigation process depends on truthful disclosure of facts,
 14 which is why this kind of conduct must be discouraged in the strongest possible way. The
 15 incidences set forth in this motion and the exhibits attached, demonstrate a willful and
 16 deliberate scheme set into motion by the Plaintiff with the intent to interfere with this courts
 17 ability to impartially adjudicate the case at hand by improperly influencing the court.
 18 Plaintiff's repeated deliberate attempts to deceive this court must not be allowed to continue.

20 D. Defendants Are Entitled to Attorneys' Fees from Plaintiff Should the Court
 21 Dismiss this Action.

22 Plaintiff's fraud and misrepresentations to the court have impeded the flow of this
 23 litigation. The moving Defendants have incurred thousands of dollars of attorneys' fees and
 24 this litigation is not even past the discovery phase. *See Declaration of Edward Winker.*

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IV. CONCLUSION

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11 WHEREFORE the Defendants respectfully request that this Court enter an Order
12 granting this Motion and dismissal with prejudice for Fraud on the Court. Further, defendants
13 request attorneys' fees for the defense against this fraud brought by Plaintiff.
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DATED: January 23, 2022

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